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JUAN CARLOS MIRO  
227 EDWARD AVENUE  
FULLERTON, CA 92833

*In re* Application of

MIRO ET AL.

Appl No.: 10/021,788

Filed: November 28, 2001

For: HEATBALL

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:  
: **DECISION DISMISSING**  
: **PETITION**  
: *37 CFR 1.181*  
:

This application is before the Director of Technology Center 3700 for reconsideration of the Notice of Abandonment mailed October 4, 2005. In view of the statements in the letter received October 31, 2005, the submission is being treated as a petition under 37 CFR 1.181 to withdraw the holding of abandonment and for various other reasons as outlined below. No fee is required for this petition.

The petition is dismissed. The application remains abandoned.

Initially, it is noted that the petition is informal because it is not properly signed (it is signed by only one of two applicants and the one signing has not been given a power of attorney by the other applicant). Any future submission must be properly signed.

Regarding petitioner's allegation of non-receipt of the office action dated October 18, 2004, the records of the Office indicate that an Office action was mailed to applicant at the address of record on October 18, 2004. There is a strong presumption that mail properly addressed and delivered to the United States Postal Service is in fact delivered to the addressee. An allegation that an Office action was not received may be considered in a formal petition for the withdrawal of the holding of abandonment, in accordance with *Delgar Inc. v. Schuyler*, 172 USPQ 513. This presumption that the Office action was delivered to applicant may be overcome by a showing that the action was not, in fact, received. As part of the showing, applicant must submit (1) a statement by him, and/or by anyone else at applicant's correspondence address that would have handled the Office action, stating that the Office action was not received, (2) a statement attesting to the fact that a search of the file jacket and other records indicate that the Office action was not received, and (3) all supporting documentary evidence available, as proof contra to the presumption of the delivery of the Office action such as copies of records, which disclose the receipt of other correspondence mailed from the Office on or about the same date as the action in question but fail to disclose receipt of that action would be acceptable or copies of records in which the action would have been entered had it been received, for example, file jacket notations, calendar notations, docket records, etc.

The request filed October 31, 2005 does not include items (1), (2), and (3). Petitioner has not provided a statement attesting to the fact that he has searched the file jacket and that of all other records that he keeps for the instant application, which search failed to indicate that the Office communication in question was received. Petitioner has failed to describe what records, if any, he keeps to let him know what papers he has received from the Office and the due dates for the responses that need to be filed. How and where is the information regarding receipt of Office papers and mailing of responses kept? How does petitioner know a response is due? Is this information kept on a calendar? Separate sheet of paper? On the file maintained by petitioner? An explanation of where/how the above information is kept and copies of the pertinent papers should be submitted. To aid petitioner prepare a renewed petition, if that is petitioner's desire, enclosed is a copy of section 711.03(c) of the Manual of Patent Examining Procedure (MPEP), which section deals with petitions relating to abandonment.

Petitioner argues that the city of Fullerton's building department approved the drawings, so petitioner does not understand why the USPTO has objected to the drawings. It should be noted that the standards set forth in 37 CFR 1.84 apparently are not the drawing standards for the city of Fullerton. To aid petitioner in a better understanding of standards for drawings in United States patents, enclosed is a copy of 37 CFR 1.84. The petitioner's misunderstanding of the drawing standards is not a persuasive argument to overcome the drawing objections. It is not clear what relief (if any) petitioner is requesting with regard to the drawing objections, but the drawing objections remain.

Petitioner argues that the office "has repeatedly deny [sic, presumably rejected] the claims on my application" and that "the examiner continues to delay the issuing of the patent based on these issues". Petitioner also states, "Upon research of similar applications in the same classification for the same type inventions, I see that my claims are very similar, and include the same information, as other previously patented inventions in the same classification." It appears that applicant is unfamiliar with patent prosecution in general as a patent is granted when an inventor invents something new and dissimilar from previous inventions. Petitioner also generally argues that the delays in the patent prosecution are unwarranted and that the customer service is generally poor in his opinion. However, a review of the examiner's rejections and procedural history of the application as a whole is not violative of examining practice and procedure or abusive of the statutes governing patentability as to constitute an abuse of discretionary or arbitrary and capricious actions warranting the exercise of supervisory authority by the undersigned.

Petitioner statement that the office "has repeatedly deny [sic, presumably rejected] the claims on my application" may be construed as an admission that both the non-final rejection and the final rejection were in fact received by petitioner. Any renewed petition must address the inconsistency that petitioner alleges that the final rejection mailed October 18, 2004 was not received, yet petitioner also argues that the claims have been repeatedly denied.

Since applicant is clearly unfamiliar with patent prosecution procedure, applicant may want to consider professional help. A listing of registered patent attorneys and agents is available on the USPTO Internet web site <http://www.uspto.gov> in the Site Index under "Attorney and Agent Roster." Applicants may also obtain a list of registered patent attorneys and agents located in their area by writing to the Mail Stop OED, Director of the U. S. Patent and Trademark Office, PO Box 1450, Alexandria, VA 22313-1450.

It is noted that the letter received October 31, 2005 has a different address than the correspondence address of record. If applicant/petitioner wants correspondence from the office to be mailed to a different address, then they should file a change of address.

Any request for reconsideration of this decision should be submitted within TWO (2) MONTHS from the mail date of this decision. The reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.181".



Richard A. Bertsch, Director  
Technology Center 3700

Attachment: 37 CFR 1.84, MPEP 711.03(c)